IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2323 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AVLESH OIL MILLS

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 2323 of 1994

MR SANJAY M AMIN for Petitioner No. 1

MS LILU K BHAYA for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 04/05/2004

ORAL JUDGEMENT

The petitioner challenging under Articles 226 and 227 of the Constitution of India, the action of the

respondent of issuing a bill for minimum charges of electricity connection. The respondent has issued as per the agreement between the petitioner and respondent, a bill for minimum charges as per clause-2 of the undertaking given by the petitioner. The said clause reads as under:

"(2) In consideration of the special obligations assumed and or investments made by the Board for making supply available, I/We hereby guarantee that the total annual charges payable by me/us for the electrical energy consumed shall not be less than Rs. 1,12,038/- subject to monthly minimum charges payable under the tariff in force, the difference between the guaranteed minimum annual charges and the actual monthly charges paid by me/us (if the latter are less than the former) shall be payable at the end of each 12 months period."

2. The respondent has issued a bill for minimum charges at Rs. 54,725/- dated 9.2.1994 for the year 1993/94.

3. It is contended by the ld. counsel for the petitioner that as the petitioner has already been penalized by raising a bill worth Rs. 13,27,654-19ps. for committing theft of electricity which was detected by the respondent on a raid/checking carried out on 16.4.1993. It is averred by the petitioner that once respondent is issuing a bill for huge amount of Rs. 13 lacs and odd, they are estopped from issuing a bill for minimum charges as per clause-2 of the undertaking given by the petitioner to the respondent. The minimum guarantee of consumption given by the petitioner was of the electricity worth Rs. 1,12,038/-. Once the respondent has issued a bill for illegal consumption of the electricity, by applying AxBxCxD formula for Rs. 13,07,054-19ps., the clause-2 of the undertaking, as referred to hereinabove, cannot be taken shelter of, by the respondent and, therefore, the impugned bill issued by the respondent dated 9.2.1994 worth Rs. 54,725/- is illegal, bad and null and void and the respondent cannot recover the said amount from the petitioner.

4. Ld. counsel appearing for the respondent submitted that the bill issued by applying AxBxCxD formula worth Rs. 13,27,654-19ps by the respondent was because of the theft of electricity committed by the petitioner. It was not a regular consumption at all. It was incumbent upon the petitioner to consume electricity

minimum worth Rs. 1,12,038/- per year. If the total consumption of electricity in terms of rupees is lesser than the amount of Rs. 1,12,038/-, the difference ought to be paid by the petitioner as per clause-2 of the undertaking given by the petitioner, as referred to hereinabove. Therefore, it was within the powers of respondent authority, to issue the bill, for minimum charges, payable by the petitioner despite the issuance of bill for theft or for unauthorised consumption of electricity.

5. Looking to the facts and circumstances of the case and looking to the clause-2 of the undertaking, as referred to hereinabove, I am of the opinion that the consumption of the electricity, by illegal method or by unauthorised mode, cannot be reckoned or calculated for arriving at the conclusion as to the minimum consumption as referred to in the aforesaid clause-2 of the undertaking. Consumption of electricity by, illegal ways, means and method or by unauthorised mode, is to be ignored. "The electrical energy consumed" as referred to in clause-2, as referred above, does not include consumption of electricity by illegal ways, means and method or by unauthorised mode. The petitioner cannot be allowed to take advantage of his own wrong, folly or mistake. The minimum consumption of electricity, annually, must be for Rs. 1,12,038/- includes only the legal consumption. If, at all, the petitioner has utilized electricity legally and authorisedly, which is of the amount, more than Rs. 1,12,038/-, the said consumption ought to be considered for the calculation of, minimum consumption, otherwise it will tantamount to allowing the petitioner to take advantage of his own wrong.

6. The calculation of the bill for the theft of electricity committed by the petitioner on the basis of AxBxCxD formula, is for theft of electricity, by the petitioner. For this amount, the petitioner has got remedied itself as narrated in affidavit-in-reply by going to the appellate authority and by resorting to filing of the suit before the appropriate court. So far as the impugned bill of minimum consumption is concerned, which is worth Rs. 54,725/-, the respondent has issued the bill on the basis of the following calculation:

Sr. No.	Month 1993	Units Fixed charges	Energy charges	Other charges	Total 4+5+6
1	2	3	4	5	6 7

1. Jan. 4190 2310/ 2723.50 5033.50
2. Feb. 8990 2310/- 5843.50 8153.50
3. March 4490 2310/- 2918.50 5228.50
4. April 14270 2310/- 9295.50 11605.50
5. May 17680 2310/- 11492.00 13802.00
6. June 170 3265/- 220.10 3491.10
7. July 00 - - -
8. Aug. 00 - - -
9. Sept. 00 - - -
10. Oct. 00 - - -
11. Nov. 00 3265/- - 3265.00
12. Dec. 4000 3265/- 5320.00 8585.00

Total 53790 21345/- 32819.10 59164.10

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1) Total amount charges for colum No. 7 Rs 59164.10
2) Less discount allowed during years 8 Rs -
3) Net amount paid by the consumers Rs -
4) Annual minimum payable sr. 8 Rs 112038.50
5) Diff. if any 4-3 Rs. -
6) To be recovered Rs. 52874.40

TSE Rs. 1850.60
(Tax) ----------
Rs. 54725.00
Total bill issued.

Thus, from the aforesaid calculation, it is explicitly clear that the GEB has issued , a bill in pursuance of, clause-2 of, the Undertaking as referred hereinabove because the total consumption from January, 1993 to December, 1993 in terms of money comes to Rs. 59,164/-, whereas the minimum consumption in terms of money, agreed by the petitioner, was of Rs. 1,12,038.50ps.

7. The issuance of bill for theft of electricity cannot be the base of argument of the petitioner that to that extent, even illegally the electricity was consumed which is more than Rs. 1,12,038/- and, therefore, no bill for minimum charges can be issued by the respondent authority. The consumption referred to in clause-2 of an undertaking as referred to hereinabove, includes only legally valid and authorised consumption.

8. In response to the argument canvassed by the petitioner that clause-2 of the undertaking (as referred hereinabove) is unreasonable, the ld. counsel for the respondent has also placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of

Bihar State Electricity Board, Patna and Ors., vs. M/s. Green Rubber Industries and ors., reported in AIR 1990 SC 699. The relevant paragraph reads as under:

"The agreement for supply of electricity by Board with the stipulation to pay minimum guaranteed charges, irrespective of whether energy was consumed or not would be valid and it cannot be determined with the disconnection of supply to the consumer by the Board but only according to the stipulations in the agreement. Considered by the test of reasonableness the agreement cannot be said to be unreasonable inasmuch as the supply of electricity to a consumer involves incurring of overhead installation expenses by the Board which do not vary with the quantity of electricity consumed and the installation has to be continued irrespective of whether the energy is consumed or not until the agreement comes to an end. Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of enquiry is the meaning of an isolated clause. This agreement with the stipulation of minimum guaranteed charges cannot be held to be ultra vires on the ground that it is incompatible with the statutory duty. Difference between this contractual element and the statutory duty have to be observed. A supply agreement to a consumer makes his relation with the Board mainly contractual, where the basis of supply is held to be statutory rather than contractual. In cases where such agreements are made in terms are supposed to have been negotiated between the consumer and the Board, and unless specifically assigned, the agreement normally would have affected the consumer with whom it is made."

Thus, it is evident from the aforesaid judgment, that clause-2 of the undertaking is not unreasonable and consequently action of resondent Board in issuing the bill for minimum consumption is also not unreasonable.

9. Thus, in view of the aforesaid facts and circumstances of the case, the issuance of the bill for minimum charges at Rs. 54,725/- by the respondent is

legal and valid and in consonance with clause-2 of the undertaking. The calculation arrived at as referred to hereinabove, for the year 1993-94 is also true and correct and rightly the GE Board has excluded the illegal consumption of electrical energy for arriving at the conclusion of the consumption of minimum amount of electricity. This petition, therefore, fails and is hereby dismissed with no order as to costs.

(D.N. PATEL, J.)
mandora/